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planning • environment • local government

Deed

Sargents Charity Limited Factory

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Blacktown City Council

Sargents Charity Limited

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Sargents Charity Limited Planning Agreement

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Sargents Charity Limited Planning Agreement

Summary Sheet

Council:

Name: Blacktown City Council
Address: 62 Flushcombe Rd, Blacktown NSW 2148
Telephone: (02) 9839 6461
Facsimile: (02) 9831 1961
Email: council@blacktown.nsw.gov.au
Representative: Dennis Bagnall

Developer:

Name: Sargents Charity Limited
Address: 83 Roper Road Colyton NSW 2760
Telephone: 02 9623 3333
Facsimile: 02 9623 0301
Email: grumpyschizoid@bigpond.com
Representative: Ian Allen

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 2.

Application of s94, s94A and s94EF of the Act:

See clause 8.

Security:

See Part 4.

Registration:

See clause 16.

Restriction on dealings:

See clause 17.

Dispute Resolution:

See clause 19.



Sargents Charity Limited Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Blacktown City Council of 62 Flushcombe Road, Blacktown, New South Wales
2148 (**Council**)

and

Sargents Charity Limited ABN 26 149 188 198 of 83 Roper Road Colyton NSW
2760 (**Developer**)

Background

- A The Developer has lodged Development Applications with the Council relating to the Development.
- B The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Deed.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Approval includes approval, consent, licence, permission or the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,

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- (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Construction Certificate has the same meaning as in the Act.

Contributions Plan means a contributions plan made pursuant to s94EA of the Act, which applies to development on the Land.

Development means the Pie Factory Development and the Subdivision Development.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means Lot 103 DP 1189012 and Lot 102 DP 1189012.

Link Road Upgrade means the acquisition of land and the carrying out of Work for the purpose of upgrading Link Road from the Old Wallgrove Road to Wonderland Drive, to a local road standard to meet the development in the Eastern Creek Precinct (Stage 3) as provided for in the Precinct Plan, and any Contributions Plan referred to in clause 12 of this Deed.

Party means a party to this Deed.

Pie Factory Development means the development described in Development Application DA-14-194, as modified from time to time, being construction, commissioning and opening of a new pie factory complex on Lot 103 DP 1189012.

Pie Factory Security means the amount described in Schedule 1.

Precinct Plan means the document titled *State Environmental Planning Policy No.59 – Central Western Sydney Economic and Employment Area, Employment Lands Precinct Plan, Eastern Creek Precinct (Stage 3)*, adopted by the Council on 7 December 2005 and dated 14 December 2005.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.



Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Subdivision Certificate has the same meaning as in the Act.

Subdivision Development means the development described in Development Application DA-15-1330, as modified from time to time, being subdivision of Lot 102 DP1189012 into 8 industrial lots and 1 road.

Subdivision Security means the amount described in Schedule 1.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.

- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 This Deed excludes the application of s94 and s94A to the Development.
- 8.2 This Deed does not exclude the application of s94EF to the Development.

9 Effect of Development Consents on the Development

- 9.1 The Parties acknowledge that the amounts in Schedule 1 have been calculated on the basis that the net developable area of Lot 102 DP 1189012 is 13.821 ha and of Lot 103 DP 1189012 is 4.249 ha.
- 9.2 If Development Consent is granted to the Development subject to a net developable area of the Land different to that referred to in clause 9.1, the Parties will act in good faith and using their best endeavours to agree on an appropriate pro rata adjustment of the Developer's obligations under this Deed.

Part 2 – Development Contributions

10 Monetary Contributions

- 10.1 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

11 Contribution to Link Road Upgrade

- 11.1 The Developer is to make a monetary Development Contribution to the Council for the purpose of the Link Road Upgrade in the amount of 5% of the cost of the Link Road Upgrade as determined by Council in its absolute discretion (**Link Road Contribution**).
- 11.2 The Link Road Contribution is to be made within 60 days of the receipt of a written demand by Council, which may not be made unless this Deed operates and prior to the issue of a Subdivision Certificate for the Subdivision Development.

12 Further Monetary Contributions

- 12.1 The Developer acknowledges that, following the commencement of this Deed, the Council may adopt a Contributions Plan which applies to the Land and which authorises the Council to impose, as a condition of Development Consent, a requirement that the applicant for Development Consent make a Development Contribution in respect of:
- 12.1.1 water management; and

12.1.2 traffic management.

12.2 If:

12.2.1 prior to the issue of the Subdivision Certificate in respect of the Subdivision Development; and

12.2.2 prior to the issue of a Construction Certificate in respect of the Pie Factory Development,

the Council has adopted a Contributions Plan authorising contributions of the kind referred to in clause 12.1 and given written notice to the Developer of the amount of the contribution calculated in accordance with the Contributions Plan payable in relation to the relevant Development, the Developer must, prior to the issue of the Subdivision Certificate for the Subdivision Development and prior to the issue of the Construction Certificate for the Pie Factory Development, pay to the Council the monetary Development Contributions referred to in clause 12.1 in respect of the relevant part of the Development as if the relevant part of the Development is development to which the Contribution Plan applies.

13 Payment of monetary Development Contributions

- 13.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

Part 4 - Enforcement

14 Security for performance of obligations

- 14.1 If the Council has not adopted a Contributions Plan and the Developer has not paid the Development Contributions contemplated by clause 12 prior to the Developer:
- 14.1.1 seeking a Subdivision Certificate for the Subdivision Development then the Developer must not apply for any such Subdivision Certificate unless the Developer has provided the Council with the Subdivision Security;
 - 14.1.2 seeking a Construction Certificate for the Pie Factory Development then the Developer must not apply for any such Construction Certificate unless the Developer has provided the Council with the Pie Factory Security.
- 14.2 If a Contributions Plan is adopted in accordance with clause 12 after the issue of a Subdivision Certificate for the Subdivision Development or a Construction Certificate for the Pie Factory Development, and the Developer has provided Council with Security in respect of that part of the Development in accordance with clause 14.1, then:






- 14.2.1 The Developer may make the payments required by clause 12 in respect of the relevant part of the Development in return for the Council returning the relevant Security to the Developer; or
- 14.2.2 The Council may call on the relevant Security to meet the Developer's obligations under clause 12 provided that if the amount of the relevant Security held by Council is less than the amount required to be paid under clause 12 for the corresponding part of the Development, the Developer will make an additional payment to Council equivalent to the difference.
- 14.3 The Council may call-up and apply the Security to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 14.4 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 14.5 The Developer may at any time provide the Council with a replacement Security.
- 14.6 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 14.7 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 14.8 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

15 Enforcement in a court of competent jurisdiction

- 15.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 15.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 15.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 15.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

16 No registration of this Deed

- 16.1 The Parties agree not to register this Deed for the purposes of s93H(1) of the Act.

12

17 Sale and future Development of the Site

- 17.1 The Developer agrees not to sell the Land or part of the Land unless:
- 17.1.1 it has, at no cost to the Council, first procured the execution by the person with whom it is dealing of a deed in favour of the Council in the form set out in Schedule 2, and
 - 17.1.2 the Developer is not in breach of this Deed.
- 17.2 If:
- 17.2.1 the Developer has paid the Link Road Contribution;
 - 17.2.2 the Developer has paid the Development Contributions under clause 12, or lodged the Security under clause 15; and
 - 17.2.3 the deed in Schedule 2 has been executed,
- then the Parties acknowledge that this Deed will satisfy the requirement for an agreement under clause 270(2)(b) of the Regulation in relation to any Development Application in respect of the whole or part of the Land made by the person (other than the Developer or Council) who executes the deed in Schedule 2.

Part 7 – Other Provisions

18 Review of this Deed

- 18.1 The Parties, acting in good faith and using their best endeavours, agree to review this Deed every 3 years, and otherwise if either party is of the opinion that any change of circumstance has occurred that materially affects the operation of this Deed.
- 18.2 For the purposes of clause 18.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 18.3 The parties acknowledge that this Deed will be reviewed once the requirements of the Department of Planning for regional infrastructure in the area covered by the Precinct Plan are known.
- 18.4 A failure by a Party to agree to participate in, or to take action requested by the other Party as a consequence of, a review under clause 18.1 is taken to be a dispute for the purposes of clause 19.

19 Dispute Resolution

- 19.1 Except as otherwise specifically provided by this Deed, should a dispute arise under this Deed, the Parties shall firstly meet in an attempt to resolve the dispute.
- 19.2 If the dispute is not resolved within 20 business days of the date that a Party first raises the issue about which there is a dispute, the Parties must mediate

the dispute in accordance with the Mediation Rules of the Law Society of New South Wales as set out in Schedule 3 or such amended or other Rules that are current at the time the dispute is mediated, and must request the President of the Law Society, or the President's nominee, to select a mediator.

- 19.3 If the dispute is not resolved by mediation within a further 20 business days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal

20 Notices

- 20.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 20.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 20.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 20.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 20.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 20.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 20.3.1 delivered, when it is left at the relevant address,
 - 20.3.2 sent by post, 2 business days after it is posted,
 - 20.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 20.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 20.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

21 Approvals and Consent

- 21.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.



22 Costs

- 22.1 The Developer is to pay to the Council the Council's reasonable legal costs arising from preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 30 days of a written demand by the Council for such payment.
- 22.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

23 Entire Deed

- 23.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 23.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

24 Further Acts

- 24.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

25 Governing Law and Jurisdiction

- 25.1 This Deed is governed by the law of New South Wales.
- 25.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 25.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

26 Joint and Individual Liability and Benefits

- 26.1 Except as otherwise set out in this Deed:
 - 26.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 26.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

27 No Fetter

- 27.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without

limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

28 Illegality

- 28.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

29 Severability

- 29.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 29.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

30 Amendment

- 30.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

31 Waiver

- 31.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 31.2 A waiver by a Party is only effective if it is in writing.
- 31.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

32 GST

- 32.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).



Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 32.2 Subject to clause 32.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 32.3 Clause 32.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 32.4 No additional amount shall be payable by the Council under clause 33.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 32.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
 - 32.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
 - 32.5.2 that any amounts payable by the Parties in accordance with clause 32.2 (as limited by clause 33.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 32.6 No payment of any amount pursuant to this clause 32, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 32.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 32.8 This clause continues to apply after expiration or termination of this Deed.

33 Explanatory Note

- 33.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 33.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.



Schedule 1

(Clause 14)

Security

Contribution Item	Subdivision Security	Pie Factory Security
Water Management	\$4,300,736	\$1,322,178
Traffic Management	\$435,002	\$133,733
Total of Subdivision Security and Pie Factory Security	\$4,735,738	\$1,455,911
TOTAL		\$6,191,649



Schedule 2

(Clause 15)

Deed of Adoption and Acknowledgement

Parties

Sargents Charity Limited ABN 26 149 188 198 of 83 Roper Road Colyton NSW 2760 (**Developer**)

Blacktown City Council of 62 Flushcombe Road, Blacktown, New South Wales, 2148 (**Council**)

of **#** (**Purchaser**)

Recitals

- A The Developer and the Council are parties to the Deed, under which the Developer is not to sell any of the land the subject of the Deed without entering and procuring the Purchaser to enter into a deed in this form.
- B The Developer wishes to sell to the Purchaser the Sale Land.
- C The Purchaser wishes to acquire the Sale Land from the Developer, and agrees to adopt certain obligations of the Developer under this Deed on the basis set out in this deed.

Operative Provisions

1 Interpretation

- 1.1 In this Deed the following definitions apply:

Agreement means the planning agreement dated **## 20##** between the Developer and the Council made pursuant to s93F of the *Environmental Planning and Assessment Act 1979*.

Assigned facilities means the facilities which are described in the second schedule to this Deed.

Facilities means the Development Contributions to be provided by the Developer to the Council under the Agreement.

Sale Land means the land described in the first schedule to this Deed.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

1.2.1 Words or expressions defined in the Agreement bear the same meaning in this deed.

1.2.2 Words importing the singular include the plural and vice versa.

1.2.3 Words importing a gender include the other gender.

2 Adoption of Agreement by Purchaser

2.1 The Purchaser has read the Agreement and agrees to be bound by it in so far as it applies to the Sale Land as if the Purchaser were named as a party to it in the place of the Developer.

2.2 In particular, but without limiting the generality of the foregoing, the Purchaser must comply with the provisions of clauses of the Agreement with respect to the Assigned Facilities to the extent that the Developer has not done so at the date of this Deed.

2.3 Nothing in this Deed affects the rights or liabilities of the Developer under the Agreement in relation to any matter other than the obligation to provide the Assigned Facilities.

3 Conditions of Consent for Sale Land

3.1 The Purchaser acknowledges and agrees that the Council will require, as a condition of any development consent with respect to the whole or part of the Sale Land, that the Agreement be complied with as regard to the land the subject of that consent.

SCHEDULE 1

The Sale Land

##

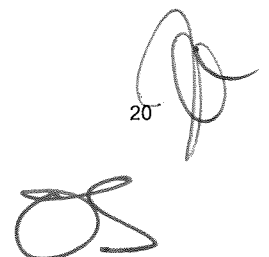
SCHEDULE 2

The Assigned Facilities

##

Executed as a Deed

[Drafting Note. Insert execution clauses of Parties]



Schedule 3

(Clause 19)

Law Society of NSW – Mediation Rules

Functions of the Mediator

1. The mediator will assist the parties to explore options for and, if possible, to achieve the expeditious resolution of their dispute ("the Dispute") by agreement between them.
2. The mediator will not make decisions for a party or impose a solution on the parties.
3. The mediator will not, unless the parties agree in writing to the contrary, obtain from any independent person advice or an opinion as to any aspect of the Dispute and then only from such person or persons and upon such terms as are agreed by the parties.

Conflicts of Interest

4. The mediator must disclose to the parties to the best of the mediator's knowledge any prior dealings the mediator has had with either of them and any interest the mediator has in the Dispute.
5. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator's capacity to act impartially the mediator will immediately inform the parties of those circumstances. The parties will then confer and if agreed continue with the mediation before the mediator.

Co-operation in the Mediation

6. The parties must co-operate with the mediator and each other during the mediation to achieve a mutually satisfying outcome to their dispute.
7. Each party must use its best endeavours to comply with reasonable requests made by the mediator to promote the efficient and expeditious resolution of the Dispute.

Authority and Representation

8. If a party is a natural person, the party must attend the mediation conference. If a party is not a natural person it must be represented at the mediation conference by a person with full authority to make agreements binding on it settling the Dispute.
9. Each party may also appoint one or more other persons including legally qualified persons to assist and advise the party in the mediation and to perform such roles in the mediation as the party requires.

Conduct of the Mediation

10. Subject to Rule 21, the mediation, including all preliminary steps, will be conducted in such manner as the mediator considers appropriate having due regard to the nature and circumstances of the Dispute, the agreed goal of an efficient and expeditious resolution of the Dispute and the view of each party as to the conduct of the mediation.
11. The mediation conference shall be held within fourteen (14) days of the selection of the mediator or within such other period as the parties may agree.
12. Without limiting the mediator's powers under Rule 10 the mediator may give directions as to:
 - 12.1 Preliminary conferences prior to the mediation conference.
 - 12.2 The exchange of experts' reports, the meeting of experts and the subsequent preparation of a joint experts' report with a view to identifying areas of agreement, narrowing the area of disagreement and clarifying briefly the reasons for disagreement.
 - 12.3 The exchange of brief written outlines of the issues involved.
 - 12.4 Service on the mediator prior to the mediation conference of any such reports and outlines.

Communication between the Mediator and a Party

13. The mediator may meet as frequently as the mediator deems appropriate with the parties together or with a party alone and in the latter case the mediator need not disclose the meeting to the other party.
14. The mediator may communicate with any party orally and/or in writing.
15. Subject to Rule 16, any document relied upon by a party and provided to the mediator must immediately be served by the party on the other party.
16. Information, whether oral or written, disclosed to the mediator by a party in the absence of the other party may not be disclosed by the mediator to the other party unless the disclosing party permits the mediator to do so.

Confidential Information

17. A party may prove objective facts, whether or not confidential, by direct evidence in any proceedings in respect of the Dispute. Subject to that, all confidential information disclosed during the mediation, including the preliminary steps:
 - 17.1 may not be disclosed except to a party or a representative of that party participating in the mediation or if compelled by law to do so; and
 - 17.2 may not be used for a purpose other than the mediation.

Privilege

18. Subject to Rule 25, the following will be privileged and will not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings in respect of the Dispute:
 - 18.1 Any settlement proposal, whether made by a party or the mediator.
 - 18.2 The willingness of a party to consider any such proposal.
 - 18.3 Any admission or concession or other statement or document made by a party.



18.4 Any statement or document made by the mediator.

Subsequent Proceedings

19. The mediator will not accept appointment as an arbitrator in or act as an advocate in or provide advice to a party to any arbitral or judicial proceeding relating to the Dispute.
20. Neither party will take action to cause the mediator to breach Rule 19.

Termination

21. A party may terminate the mediation immediately by giving written notice to each other party and to the mediator at any time during or after the mediation conference.
22. The mediator may immediately terminate the engagement as mediator by giving written notice to the parties of that termination, if, after consultation with the parties, the mediator forms the view that the mediator will be unable to assist the parties to achieve resolution of the Dispute. The mediation will not be terminated in that event unless a party gives notice to that effect to each other party. The parties must appoint another mediator, where the mediation is not terminated.
23. The mediation will be terminated automatically upon execution of a settlement agreement in respect of the Dispute.

Settlement

24. If settlement is reached at the mediation conference, the terms of the settlement must be written down and signed by the parties and the mediator before any of the participants leave the mediation conference.

Enforcement

25. In the event that part or all of the Dispute is settled either party will be at liberty:
 - 25.1 To enforce the terms of the settlement by judicial proceedings.
 - 25.2 In such proceedings to adduce evidence of and incidental to the settlement agreement including from the mediator and any other person engaged in the mediation.

Exclusion of Liability and Indemnity

26. The mediator will not be liable to a party except in the case of fraud by the mediator for any act or omission by the mediator in the performance or purported performance of the mediator's obligations in the mediation.
27. The parties shall jointly and severally indemnify the mediator against all claims, except in the case of fraud by the mediator, arising out of or in any way referable to any act or omission by the mediator in the performance or purported performance of the mediator's obligations in the mediation.

Costs

28. The parties will share equally and will be jointly and severally liable to the mediator for the mediator's fees for the mediation. The mediator may, at any time and from time to

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time, require each party to deposit with the mediator such sum as the mediator considers appropriate to meet the mediator's anticipated fees and disbursements. The mediator may decline to embark upon or continue the mediation until all such deposits are made.

29. If the mediation does not result in an agreement to resolve the Dispute, the costs of the mediation will be costs in the cause.



Execution

Executed as a Deed

Blacktown City Council by its Attorney
Michael John Mamo
pursuant to power of attorney
Registered Book 4655 No. 18

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

3 May 2016

Witness

Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act (Cth) 2001

Name/Position

Name/Position

OTTO STICHLER
DIRECTOR



Appendix

(Clause 33)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Blacktown City Council of 62 Flushcombe Road, Blacktown, New South Wales 2148
(Council)

and

Sargents Charity Limited ABN 26 149 188 198 of 83 Roper Road Colyton NSW 2760
(Developer)

Description of the Land to which the Draft Planning Agreement Applies

Lot 102 and Lot 103 in DP 1189012

Description of Proposed Development

The development described in Development Application DA-14-194, as modified from time to time, being construction, commissioning and opening of a new pie factory complex on Lot 103 DP 1189012, and Development Application DA-15-1330, as modified from time to time, being subdivision of Lot 102 DP1189012 into 8 industrial lots and 1 road.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The draft planning agreement provides for the payment of monetary contributions towards the cost of traffic works, water management and traffic management.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The draft planning agreement provides for the provision of infrastructure:

- To meet the demands generated by the Development for new public infrastructure, and
- To mitigate the potential impacts of the Development.

The draft planning agreement will:

- Provide for appropriate management of potential environmental impacts arising from the Development,
- Enable the subject land to be developed in a timely and efficient manner to promote economic development and employment opportunities, and
- Provide for the dedication of land and roads for public purposes.

How the Draft Planning Agreement Promotes the Public Interest

The draft planning agreement facilitate the carrying out of roadworks which will provide improved access to the subject land the Eastern Creek Precinct. The draft planning agreement also facilitates the carrying out of water management works and traffic management works which will benefit the Development.

The draft planning agreement, by making provision for the Developer to make contributions towards the cost of public amenities and public services to meet the demand created by the Development, and by enabling the subject land to be developed in a timely and efficient manner to promote economic development and employment opportunities, promotes the following objects of the Act:

- Promotes and co-ordinates the orderly and economic use and development of the land,
- Achieves the provision and co-ordination of community services and facilities; and
- Provides increased opportunity for public involvement and participation in environmental planning and assessment.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A



Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The draft planning agreement promotes the following two elements of the Council's Charter under s8(1) of the Local Government Act 1993:

- To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

This element of the Council's Charter is promoted through the provision of public roads for the precinct.

- To properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

This element of the Council's Charter is promoted by the Council's assessment of the development application associated with the draft planning agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

All Capital Works are as a consequence of the development and are to be provided by the Developer in-kind. As such, the Draft Planning Agreement conforms with Council's Capital Works Program

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The draft planning agreement requires contributions or security to be provided before the issue of a Subdivision Certificate or a Construction Certificate.